

M.R.Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12269 OF 2018

Shri Santosh Prakash Rawate ... Petitioner
Vs.
The State of Maharashtra and others ... Respondents

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Mr. V. R. Kumbhar i/b Ms. Ashwini Bandiwadekar for Petitioner.
Mr. K. S. Thorat, AGP for Respondent Nos. 1 & 2.

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CORAM : M. S. KARNIK, J.
DATE : 27TH MARCH, 2019

P. C. :

1. Rule. The Assistant Government Pleader waives service of Rule on behalf of respondent nos. 1 and 2. Respondent nos. 3 & 4 is formal party. By consent, Rule made returnable forthwith and heard finally.

2. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner is challenging the order dated 22.01.2018 passed by the Education Officer (Secretary), Zilla Parishad, Thane refusing to grant approval to the appointment of the petitioner as a Junior Clerk. The petitioner was appointed as a Junior Clerk on 1st February 2012, pursuant to an advertisement dated 22nd October 2011. The vacancy was created as result of

retirement of a Junior Clerk-Shri Gangadhar Nago Patil who retired on 31st May 2011. The post to be filled up is against VJNT category. Pursuant to an advertisement, it is pointed out that 10 candidates applied. The petitioner was selected and consequently by an order dated 6th March 2012 was appointed as a Junior Clerk.

3. The proposal for approval of appointment of the petitioner was submitted on 9th July 2012 which is at page No. 24 of the paperbook. The Education Officer refused to approve the appointment of the petitioner in view of the ban on recruitment as per Government Resolutions dated 10th June 2010 and 12th February 2015. Learned counsel for the petitioner would submit that his case is not covered by the Government Resolutions dated 10th June 2010 and 12th February 2015.

4. The learned Assistant Government Pleader on the other hand would submit that there was a ban on recruitment and therefore the Education Officer has rightly relying upon the said Government Resolution refused to grant approval to the appointment of the petitioner.

5. Heard learned counsel for the parties. I have gone

through the Government Resolution dated 12th February 2015. It is not in dispute that pursuant to the advertisement dated 22nd October 2011, the petitioner was appointed by an appointment order dated 6th March 2012. The appointment of the petitioner was in view of the retirement of the then incumbent Shri Gangadhar Nago Patil. The post on which the petitioner was appointed was a sanctioned vacant post.

6. Perusal of the Government Resolution dated 10th June 2010 reveals that the said Government Resolution provides for a ban for a period of one year from 5th June 2010. The advertisement was issued after this period and even the appointment of the petitioner consequently is made when the ban was not in effect. The petitioners appointment is not covered by the ban.

7. In this view of the matter, the Government Resolution dated 10th June 2010 is not applicable to the case of the petitioner.

8. In so far as the Government Resolution dated 12th February 2015 is concerned, the said Government Resolution clearly provides that the staffing pattern has come into existence from 23rd

October 2013 and the appointment to be made as per revised staffing pattern are only after 23rd October 2013. The Government Resolution dated 12th February 2015 does not provide for any retrospective operation. In view of this matter, even Government Resolution dated 12th February 2015 is not applicable to the case of the petitioner.

9. The petitioner has indicated that the petitioner was appointed on the post which fell vacant as a result of the retirement of Shri Gangadhar Nago Patil, the post which was already sanctioned and the petitioner has continued in the said post. The impugned order passed by the Education Officer is therefore unsustainable. The impugned order is quashed and set aside.

10 The petition is allowed in terms of prayer clause [b].

11. Rule is made absolute in the above terms with no order as to costs.

(M. S. KARNIK, J.)